

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1935

IN THE MATTER OF:

Served December 6, 1978

Application of DAVID C. PEARSON)
T/A E & H TRANSPORTATION COMPANY)
for a Certificate Authorizing)
Charter Operations Pursuant to)
Contract with Southeast Neighbor-)
hood House, Inc.)

Case No. AP-78-45

By application filed October 19, 1978, David C. Pearson, a sole proprietor, trading as E & H Transportation Company (Pearson), filed the above-captioned application for a certificate of public convenience and necessity to transport passengers in charter operations pursuant to a contract with the Southeast Neighborhood House, Inc. The proposed service involves the transportation of approximately 20 persons a day in a 10-passenger van from points in the District of Columbia to the Southeast Neighborhood House, 1225 Maple View Place, S. E., Washington, D. C., and return. The contract price is \$1,200 per month for transportation of the ambulatory clients of this geriatric day-care facility and specifies that additional service for three non-ambulatory wheelchair passengers may be provided at \$800 per month. Order No. 1910, served October 24, 1978, and incorporated by reference herein, set this proceeding for public hearing on November 28, 1978. No person filed a protest to the application, and, pursuant to Commission Rule 22-01, applicant filed a request to waive the public hearing and proceed on the evidence of record. By Order No. 1925, served November 24, 1978, and incorporated by reference herein, the public hearing was cancelled.

Pearson holds Certificate No. 53 from this Commission authorizing the non-emergency transportation of persons confined to wheelchairs and participating in the medicaid program administered by the Department of Human Resources of the District of Columbia. The non-ambulatory patients who are mentioned in this contract are participants in the medicaid program and their transportation may be performed pursuant to Pearson's existing certificate. Additionally, Pearson has been transporting the ambulatory persons in a manner identical to that requested herein pursuant to a grant of temporary authority issued by Order No. 1882, served September 19, 1978, and incorporated by reference herein. In support of the temporary authority

application, Southeast Neighborhood House states that it operates a geriatric day-care facility and requires daily transportation of its clients. Its program would "probably shut down" if adequate transportation were not available.

Applicant intends to continue use of the 10-passenger van currently employed in temporary authority operations. He has submitted an affidavit indicating compliance with Commission requirements regarding publication of notice of the application and hearing in a newspaper of general circulation in the Metropolitan District, and posting such notice in each of his vehicles. Pearson also filed a projected revenue and revenue deductions statement based on a one-year contract with Southeast Neighborhood House.

The Compact, Title II, Article XII, Section 4(b) provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds ". . . that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied."

The Commission finds that applicant has sustained its burden of proof regarding the matter of need for service. No existing carriers opposed the application, and Pearson has been providing service without complaint under its grant of temporary authority. The evidence of record establishes that applicant has entered into a contract with Southeast Neighborhood House, and that he has suitable equipment available to conduct the service.

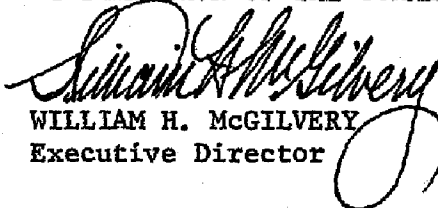
In this proceeding the carrier's fitness has been called into question because contract operations for Southeast Neighborhood House were being conducted without authority after Pearson had been admonished in another proceeding to familiarize himself with the requirements of the Compact. Stretching patience, if not credulity, Pearson again pleads ignorance, which claim is at least marginally supported by the fact that he faithfully reported and identified income from the unauthorized operation in each of his quarterly financial reports to the Commission. Indeed, this is how the matter came to our attention. Upon the staff's inquiry and further explanation of requirements, Pearson immediately filed an application for temporary authority, timely following this with an application for a certificate. We must conclude, under the circumstances, that applicant's fault has been failure to familiarize himself with the law. The evidence indicates that the violation was ingenuous rather than willful. We do not think that the public interest in this case would best be served by a finding of unfitness which would result, perforce, in the denial of this application. However, another such violation would, we believe,

establish a pattern in contravention of the public interest and justify termination of Pearson's privilege to engage in regulated motor carrier operations.

THEREFORE, IT IS ORDERED:

1. That David C. Pearson T/A E & H Transportation Company is hereby granted authority to transport passengers, in charter operations pursuant to a written contract with Southeast Neighborhood House, Inc., from points in the District of Columbia to Southeast Neighborhood House, 1225 Maple View Place, S. E., Washington, D. C., and return, restricted to service performed in vehicles with a manufacturer's designed seating capacity of 15 persons or less (including the driver).
2. That David C. Pearson T/A E & H Transportation Company is hereby directed to file two copies of an appropriate WMATC Tariff, in accordance with the authority granted herein, within 30 days from the date of service hereof, such tariff to be effective upon acceptance by the Executive Director.
3. That upon timely compliance with the requirements of the next preceding paragraph, an appropriately revised Certificate of Public Convenience and Necessity No. 53, shall be reissued to David C. Pearson T/A E & H Transportation Company.
4. That the temporary authority granted in Order No. 1882 to David C. Pearson T/A E & H Transportation Company shall stand cancelled upon the issuance of a revised certificate herein.
5. That in the event David C. Pearson T/A E & H Transportation Company fails to comply with the directive set forth above within 30 days, or such further time as may be authorized, the grant of authority made herein shall be considered null and void and the application shall stand denied in its entirety effective upon expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director